



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

January 30, 2015 Government Records Council Meeting

Aakash Dalal
Complainant

Complaint No. 2014-214

v.

NJ Division of Criminal Justice
Custodian of Record

At the January 30, 2015 public meeting, the Government Records Council (“Council”) considered the January 20, 2015 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian has borne his burden of proof that he lawfully denied access to the requested letters and e-mails described in the Complainant’s January 27 and March 10, 2014 OPRA requests because he certified, and the record indicates, that no responsive records exist. N.J.S.A. 47:1A-6; See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 30th Day of January, 2015

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: February 4, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 30, 2015 Council Meeting**

**Aakash Dalal¹
Complainant**

GRC Complaint No. 2014-214

v.

**NJ Division of Criminal Justice²
Custodial Agency**

Records Relevant to Complaint:

January 27, 2014 OPRA Request:

“1. Letter and attachments and enclosures from Bergen County Prosecutor John L. Molinelli, dated February 22nd, 2013, to either former Attorney General Jeffrey Chiesa, the Division of Criminal Justice, Elie Honig, or Boris Moczula requesting authorization to prosecute certain crimes requiring the Attorney General’s authorization.

2. The aforementioned document(s) are currently within the possession and control of the Division of Criminal Justice.”

March 10, 2014 OPRA Request:

“1. An email[sic] with the SUBJECT header of “State v. Anthony Graziano & Aakash Dalal” sent on February 28, 2013 by former Deputy Director of the Division of Criminal Justice Boris Moczula using the e-mail address moczulab@njdcj.org to Bergen County Prosecutor John Molinelli at e-mail address JMolinelli@BCPO.NET.

2. An e-mail with the SUBJECT header of “RE: State v. Anthony Graziano & Aakash Dalal” sent on February 28, 2013, March 1, 2013, or March 2, 2013 by Bergen County Prosecutor John Molinelli using e-mail address JMolinelli@BCPO.NET to former Deputy Director of the Division of Criminal Justice Boris Moczula at e-mail address moczulab@njdcj.org.”

Custodian of Record: Robert McGrath

Request Received by Custodian: January 27, 2014; March 10, 2014

Response Made by Custodian: February 11, 2014; March 17, 2014

GRC Complaint Received: May 30, 2014

¹ No legal representation listed on record.

² Represented by E. Robbie Miller, AAG.

Background³

Request and Response:

On January 27, 2014, the Custodian received an Open Public Records Act (“OPRA”) request from the Complainant seeking the above-mentioned records. On February 11, 2014, eleven (11) business days later, the Custodian responded, in writing, stating that the Division of Criminal Justice (“DCJ”) does not possess the records sought. The Custodian further advised the Complainant to contact the Bergen County Prosecutor’s Office for the requested records.

On March 10, 2014, the Custodian received a second OPRA request from the Complainant seeking the above-mentioned records. On March 17, 2014, five (5) business days later, the Custodian responded, in writing, stating that the DCJ does not possess the requested records.

Denial of Access Complaint:

On May 30, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant did not proffer any argument in support of his complaint.

Statement of Information:

On June 16, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that upon receiving both requests, Custodian’s Counsel (“Counsel”) made inquiries to locate the responsive records. Counsel reached out to individuals identified in the Complainant’s request, including Eli Honig and Boris Moczula, in his search. The Custodian certified that the search failed to locate any responsive records for either of the Complainant’s OPRA requests.

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

The Council has previously found that, in light of a custodian’s certification that no records responsive to the request exist, no unlawful denial of access occurred. *See Pusterhofer v. N.J. Dep’t of Educ.*, GRC Complaint No. 2005-49 (July 2005). Here, the Custodian certified that no responsive letters or e-mails exist as particularly described in the Complainant’s January 27

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

and March 10, 2014 ORPA requests. Additionally, the Complainant failed to provide any evidence in the record to rebut the Custodian's certification.

The Custodian has borne his burden of proof that he lawfully denied access to the requested letters and e-mails described in the Complainant's January 27 and March 10, 2014 OPRA requests because he certified, and the record indicates, that no responsive records exist. N.J.S.A. 47:1A-6; *See Pusterhofer*, GRC No. 2005-49.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proof that he lawfully denied access to the requested letters and e-mails described in the Complainant's January 27 and March 10, 2014 OPRA requests because he certified, and the record indicates, that no responsive records exist. N.J.S.A. 47:1A-6; *See Pusterhofer v. N.J. Dep't of Educ.*, GRC Complaint No. 2005-49 (July 2005).

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.
Deputy Executive Director

January 20, 2015